

SERVED: July 17, 2007

NTSB Order No. EA-5300

UNITED STATES OF AMERICA  
**NATIONAL TRANSPORTATION SAFETY BOARD**  
WASHINGTON, D.C.

Adopted by the NATIONAL TRANSPORTATION SAFETY BOARD  
at its office in Washington, D.C.  
on the 16<sup>th</sup> day of July, 2007

_____	)	
MARION C. BLAKEY,	)	
Administrator,	)	
Federal Aviation Administration,	)	
	)	
Complainant,	)	
	)	Docket No. SE-18002
v.	)	
	)	
MICHAEL CONRAD RAAB,	)	
	)	
Respondent.	)	
_____	)	

**OPINION AND ORDER**

Respondent has appealed from the oral initial decision of Administrative Law Judge William E. Fowler, Jr. in this matter,<sup>1</sup> issued following an evidentiary hearing held on May 2 and 10, 2007. The Administrator's emergency order revoked respondent's "Airframe - Powerplant Mechanic Certificate ... with Inspection

---

<sup>1</sup> A copy of the initial decision, an excerpt from the hearing transcript, is attached.

Authorization," based on alleged violations of 14 C.F.R.

§§ 43.13(a) and (b),<sup>2</sup> and 43.15(a)(1).<sup>3</sup> The law judge found that respondent violated these sections as the Administrator had alleged, and affirmed the Administrator's imposition of the sanction of revocation. We deny respondent's appeal.

The Administrator's March 30, 2007 order, which served as the complaint before the law judge, alleged that respondent performed maintenance on a Cessna 310Q aircraft on December 6, 2006, on behalf of Discovery Flight, and signed off on an annual

---

<sup>2</sup> The applicable portions of 14 C.F.R. § 43.13 provide as follows:

- (a) Each person performing maintenance, alteration, or preventive maintenance on an aircraft, engine, propeller, or appliance shall use the methods, techniques, and practices prescribed in the current manufacturer's maintenance manual or Instructions for Continued Airworthiness prepared by its manufacturer, or other methods, techniques, and practices acceptable to the Administrator...
- (b) Each person maintaining or altering, or performing preventive maintenance, shall do that work in such a manner and use materials of such a quality, that the condition of the aircraft, airframe, aircraft engine, propeller, or appliance worked on will be at least equal to its original or properly altered condition (with regard to aerodynamic function, structural strength, resistance to vibration and deterioration, and other qualities affecting airworthiness).

<sup>3</sup> Section 43.15(a)(1) requires each person performing an inspection required under parts 91, 125, or 135 to "[p]erform the inspection so as to determine whether the aircraft, or portion(s) thereof under inspection, meets all applicable airworthiness requirements..."

inspection that approved the aircraft's return to service when the aircraft was in an unairworthy condition. The Administrator's complaint specifically alleged that the aircraft in question contained an elevator trim tab actuator that was "rigged backwards," and that this discrepancy resulted in the owner of the aircraft crashing it on December 14, 2006. The complaint alleged that the aircraft had approximately 28 total discrepancies<sup>4</sup> that precluded the aircraft's return to service. Compl. at ¶ 11(a)–11(bb). Based on these allegations, the Administrator charged respondent with violations of §§ 43.13 and 43.15, and revoked respondent's certificate.<sup>5</sup>

Respondent appealed the Administrator's order. At the hearing, the Administrator presented the testimony of the aircraft owner's son, Mr. Robert Holland, who witnessed the accident. Mr. Holland testified that he and his father received an invoice for work performed on the aircraft on December 4,

---

<sup>4</sup> Subsequently, the Administrator withdrew her allegation with regard to one discrepancy; the issues in this case arise out of 27 discrepancies.

<sup>5</sup> The Administrator issued her revocation order pursuant to the terms of 49 U.S.C. § 44709(e)(2), which provides that, where safety in air commerce or air transportation requires immediate effectiveness of an order, such order may become instantly operative. The Board's regulations at 49 C.F.R. §§ 821.52–821.57 govern appeals of such orders. Respondent has waived the expedited procedures that normally apply to emergency revocation proceedings under the Board's Rules of Practice.

2006, and that the invoice included a list item that stated, "[r]emove and replace elevator trim actuator." Exh. J-5; Tr. at 38. The Administrator also presented the testimony of Mr. Thomas Mancuso, an FAA Airworthiness Safety Inspector. Mr. Mancuso testified about the purpose and proper functioning of an elevator trim tab actuator. Tr. at 48. Mr. Mancuso also stated that the record showed that respondent had performed a preliminary inspection of the aircraft in July 2006, in which he noted the elevator trim tab discrepancy; Mr. Mancuso testified that he would have sent the component out for an overhaul if it was "worn beyond limits," as respondent's July 2006 notation indicated. Tr. at 77. The Administrator also provided the testimony of Mr. Elwood Gorton, another witness to Mr. Holland's accident. Tr. at 86.

Finally, the Administrator presented the testimony of Mr. Daniel Spera, who is a principal maintenance inspector with the FAA Teterboro Flight Standards District Office. Mr. Spera testified that individuals who hold Inspection Authorization certificates (IAs) must be certain that all of an aircraft's previously documented discrepancies are addressed before returning the aircraft to service,<sup>6</sup> and that an IA should verify

---

<sup>6</sup> We note that any items contained on this aircraft's Minimum Equipment List are not at issue in this case.

these corrections by either checking the components himself or by reviewing the maintenance records for the aircraft. Tr. at 102. Mr. Spera also testified that checking the elevator trim tab actuator after installation of the actuator is particularly "critical" on Cessna 310 aircraft. Tr. at 114-15. Mr. Spera opined that respondent did not satisfactorily complete the inspection of the aircraft in question, notwithstanding the fact that respondent had placed a checkmark beside the list item on the Cessna checklist that stated, "Elevator and Elevator Trim - Check for proper travel." Tr. at 141 (referring to Exh. A-6 at 5). Mr. Spera further stated that none of this aircraft's maintenance records indicate that a mechanic had taken any corrective action for any of the additional discrepancies that respondent had noted. Tr. at 125. Mr. Spera also testified that the Federal Aviation Regulations (FAR) do not set forth any sort of bifurcated inspection process, whereby an inspector may conduct a preliminary inspection, and then return to re-inspect the aircraft in order to verify that a mechanic has corrected any discrepancies that the inspector had previously noted. Tr. at 170. Therefore, Mr. Spera testified that the regulations require individuals such as respondent to verify that no discrepancies exist that would render the aircraft unairworthy

at the time that the IA certifies the aircraft for return to service. Tr. at 172.

At the hearing, respondent testified that, notwithstanding his notation that the "elevator trim barrel" was "worn beyond allowable limits," he nevertheless determined that the elevator trim tab actuator was in fact airworthy according to the criteria in the Cessna 310 Service Manual. Tr. at 204 (referring to Exh. R-7 at ¶ G(1)); see also Exh. A-6 at 22. Respondent stated that, pursuant to the manual, he did not believe he was required to re-inspect the elevator trim tab actuator again in December 2006, because his preliminary inspection in July of that year had shown that the component was in an acceptable condition. Tr. at 205. Respondent also testified that, with regard to the other discrepancies, he walked around and checked each one to ensure that the relevant component was in an airworthy condition. Tr. at 210, 223. Respondent conceded that no maintenance entries indicating any corrections of the discrepancies existed in the aircraft's logbook, but he said that he performed visual inspections to verify the correction of each discrepancy. Tr. at 243-44.

Respondent appeals the law judge's conclusion that he violated §§ 43.13 and 43.15 by certifying the aircraft as airworthy when the aircraft had approximately 26 discrepancies,

in addition to the elevator trim tab discrepancy, that rendered the aircraft unairworthy. Respondent first argues that the Administrator prevented respondent's intended expert witnesses from testifying at the hearing, because the expert witnesses became unavailable after the Administrator contacted their employer, Cessna Aircraft Company. Respondent argues that such contact resulted in the deprivation of his right to due process under the Fifth Amendment. U.S. Const. Amend. V (stating, "No person shall ... be deprived of life, liberty, or property, without due process of law"). Respondent also cites the Board's Rules of Practice that govern discovery, and various Federal court cases indicating that an attorney's contact with a witness's employer is inappropriate.

Respondent also argues that the Administrator failed to fulfill her burden of proof with regard to the alleged regulatory violations. In particular, respondent argues that, in July 2006, he conducted a preliminary inspection of the aircraft and noted 77 discrepancies, and did not certify the aircraft as airworthy. Respondent states that he subsequently returned to inspect the aircraft, and confirmed that the mechanics from Discovery Flight had corrected the discrepancies. Respondent argues that the Administrator did not prove that the elevator trim tab actuator had been improperly installed at the

time that respondent re-inspected the aircraft. Respondent also contends that the FAR do not require re-inspection of components that an inspector has already verified as airworthy upon the inspector's first, preliminary inspection of the aircraft. Overall, respondent argues that the Administrator's allegations are based on speculation and assumptions, and that she did not meet her burden of proof.

The Administrator contests each of respondent's arguments, and urges us to affirm the law judge's decision. In particular, the Administrator alleges that approximately 27 discrepancies existed when respondent certified the aircraft as airworthy, and that respondent's alleged oversight with regard to the elevator trim tab actuator resulted in the death of the pilot of the aircraft. The Administrator also argues that the FAA did not act inappropriately in contacting Cessna with regard to respondent's intention to call two expert witnesses from Cessna, and that respondent has failed to show how the Administrator's contact with Cessna prejudiced respondent's case.

We note that we have previously considered similar due process arguments. Administrator v. Danielsen, NTSB Order No. EA-971, Order Denying Reconsideration, EA-1044, at 2 (1977). In general, we have held that, where a respondent has had the opportunity to present and cross-examine witnesses at the



administrative hearing, neither the law judge nor the Administrator has denied the respondent due process of law, as established by the Fifth Amendment. See Administrator v. Nowak, 4 NTSB 1716 (1984); Administrator v. Logan, 3 NTSB 767, 768 (1977); Administrator v. Smith, 2 NTSB 2527, 2528 (1976). Given that respondent, who at all times in this proceeding was represented by counsel, had the opportunity to present witnesses and evidence, and cross-examine the Administrator's witnesses, we find his due process argument unavailing. Respondent appears to imply that the Administrator's counsel engaged in witness tampering with regard to the Cessna employees, but presents only his own testimony regarding such allegations, and does not offer any direct evidence. Tr. at 262-268. In addition, respondent has not shown that the absence of these witnesses was prejudicial to his case. Tr. at 267 (stating that neither witness had any direct knowledge of the inspection that is the subject of this case).<sup>7</sup> Moreover, we note that we typically

---

<sup>7</sup> We also do not accept respondent's argument that the Administrator violated the Board's procedural Rules of Practice with regard to discovery. Respondent cites 49 C.F.R. § 821.19(b) and (c) for this argument, but § 821.19 only establishes the procedural requirements for serving copies of, and responses to, notices of deposition and discovery requests, and provides that, while the Board is not bound by the Federal Rules of Civil Procedure, we will consider the Rules to be instructive. Respondent's argument based on § 821.19, therefore, is inapposite.

review law judges' evidentiary rulings under an abuse of discretion standard. See, e.g., Administrator v. Zink, NTSB Order No. EA-5262 (2006); Administrator v. Seyb, NTSB Order No. EA-5024 at 2-3 (2003); Administrator v. Van Dyke, NTSB Order No. EA-4883 (2001). The law judge did not abuse his discretion in considering both parties' arguments concerning the witnesses from Cessna, and concluding that respondent had not presented direct evidence of any improper conduct on the part of the Administrator. Tr. at 271-272.

As for the law judge's holding concerning respondent's alleged violations of §§ 43.13 and 43.15, we note that we have previously held inspectors to a high standard. See, e.g., Administrator v. Garrelts, 7 NTSB 208 (1990) (stating that, where an IA certified an aircraft as airworthy when it had numerous discrepancies, the IA had failed to demonstrate, "the care, judgment, and responsibility required of the holder of any FAA certificate or authorization related to aircraft maintenance"); Administrator v. Baer, NTSB Order No. EA-4619 at 3 (1998) (same). Moreover, we have noted that the FAR consider "inspections" to be a form of "maintenance." Administrator v. Scott, NTSB Order No. EA-4030 at 3 (1993); see also 14 C.F.R. § 1.1 (defining "maintenance" to include "inspections"). In this regard, inspections are subject to the requirements of

§§ 43.13 and 43.15. Moreover, Board precedent establishes that the Administrator may substantiate an inspector's improper certification of an aircraft as airworthy by circumstantial evidence, given that direct evidence of such is often impossible to ascertain. Administrator v. Moris & Emerson, 2 NTSB 2102, 2104-2105 (1976); see also Administrator v. Bielstein, NTSB Order No. EA-4980 at 3-4 (2002). Finally, we have previously acknowledged that it is appropriate for inspectors to review and rely on maintenance records to ensure safety of flight. See Bielstein, supra, at 3.

We do not find respondent's arguments regarding the violations of §§ 43.13 and 43.15 to be persuasive. First, we disagree with respondent's assertion that he properly conducted an annual inspection of the aircraft at issue. The record indicates that respondent noted a discrepancy concerning the "elevator trim barrel" during his evaluation of the aircraft in July 2006. Exh. A-6 at 22; Tr. at 199-200. Respondent, however, did not locate or review any maintenance records regarding the component during his re-inspection in December 2006, nor ask the mechanics at Discovery Flight about whether they had overhauled or replaced the component. Tr. at 206-207, 225. Respondent appears to attempt to justify these failures by implying that the mechanics should have known that respondent's

tests on the elevator trim tab actuator had ultimately returned a result that was within the acceptable range. Respondent stated that, in lieu of performing another test on the elevator trim tab actuator in December 2006, he merely conducted a visual inspection and "did a control check by hand." Tr. at 226. This lack of communication with the mechanics, combined with the failure to conduct a thorough re-inspection, indicates a violation of §§ 43.13 and 43.15. Moreover, § 43.13(a) clearly precludes certificate holders from overlooking the provisions of maintenance manuals. Excerpts from the Cessna 310 Service Manual in evidence include a "Warning" with regard to the elevator trim tab, stating: "Insure that elevator trim tab moves in the proper direction when operated by the trim control wheel" (Exh. A-2 at 4), and provide detailed instructions for inspecting the "Elevator Trim Tab System." (Exh. R-7 at 1-2).

Based on this record, we find that respondent did not comply with § 43.13(a) and (b), in that he did not adhere to the manufacturer's instructions when he failed to ensure that the elevator trim tab actuator was in an airworthy condition prior to certifying the aircraft for operation.<sup>8</sup> In addition, we find

---

<sup>8</sup> We have long held that the standard for airworthiness consists of two prongs: (1) whether the aircraft conforms to its type certificate and applicable Airworthiness Directives; and (2) whether the aircraft is in a condition for safe operation. Administrator v. Doppes, 5 NTSB 50, 52 n.6 (1985). In the case

that respondent violated § 43.15(a)(1) because he did not adequately inspect the elevator trim tab actuator in December 2006, and did not locate or review any maintenance records regarding the elevator trim tab actuator to determine whether the aircraft met all applicable airworthiness requirements.

The Board finds that safety in air commerce or air transportation and the public interest requires the affirmation of the Administrator's order of revocation.

**ACCORDINGLY, IT IS ORDERED THAT:**

1. Respondent's appeal is denied; and
2. The order of the law judge denying respondent's appeal and affirming the Administrator's emergency order of revocation is affirmed.

ROSENKER, Chairman, SUMWALT, Vice Chairman, and HERSMAN, HIGGINS, and CHEALANDER, Members of the Board, concurred in the above opinion and order.

---

(..continued)

at hand, the Administrator has provided evidence that, if the elevator trim tab actuator is in a "worn" or inoperative condition, such a state would render the aircraft unairworthy. Tr. at 75. We accept this assessment, given that the Board defers to the Administrator with regard to her interpretation of her own regulations. 49 U.S.C. § 44709(d)(3); Garvey v. NTSB, 190 F.3d 571, 576-79 (D.C. Cir. 1999).